APR - 9

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

MAR 26 2001

The Honorable Sheila Kuehl
California Senate
California State Legislature
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

Dear Senator Kuehl:

Thank you for your letter regarding the World Trade Organization (WTO), the North American Free Trade Agreement (NAFTA), and the interests of state governments such as California. The Bush Administration and I firmly believe that expanded trade - imports as well as exports - improves the well being of Americans. It leads to better, higher-paying jobs in more competitive businesses – as well as to more choices of goods and inputs, with lower prices, for hard-working families and entrepreneurs, in California and across our nation. Agreements such as NAFTA and the Uruguay Round which created the WTO have contributed to the longest period of economic growth in U.S. history, with levels of full employment, and without inflationary pressures, beyond the forecasts of any economist. Expanding global trade and the expanding economic growth in the United States are not coincidental; they are achieved in concert.

As you are well aware, California is the country's largest exporting state. In 1999, California's goods exports were $109.8 billion, up 50 percent since 1992. Total exports from California to NAFTA countries in particular were 111 percent higher than 1993, prior to the NAFTA's enactment, and Mexico is now California's number one export market. Nearly 1.2 million California jobs were supported by goods exports in 1999.

I would like to address the concerns you raise about the possible impact of trade agreements on state and local decision-making. The U.S. Congress passed the Uruguay Round Agreements Act (P.L. 103-465) and the NAFTA (P.L. 103-182) to implement these agreements in the United States and achieve the benefits they bring for America's businesses, farms, and workers. At the same time, it is important to note that the WTO and NAFTA agreements do not in any way preempt or invalidate federal, state, or local laws that may be inconsistent with those agreements. This is because, while the United States has committed itself to adhere to the rules set out in the WTO and the NAFTA agreements, those rules do not have direct effect in U.S. law. In particular, the NAFTA and the WTO agreements ensure that state and local agencies continue to have an absolute right to set workplace, environmental, health, and safety standards at the levels they consider appropriate, including at "zero risk" levels if they so choose, provided that the standards are transparent and are not used as disguised barriers to trade.

It should further be emphasized that the WTO and NAFTA dispute settlement panels, including NAFTA Chapter 11 on investor-state dispute settlement, have no authority to change U.S. law or to require the United States or any state or local government to change its laws. Only Congress or a state legislature can change a statute in the United States and nothing in the WTO or NAFTA agreements alters that fact.

If, ultimately, the United States cannot reach an agreed settlement with a country that claims the United States has violated its trade obligations, that country may withdraw trade benefits of equivalent effect. However, under both the NAFTA and the WTO rules, the United States retains complete sovereignty in its decision of how to respond in such a case. I would like to respond to the specific issues you raised.

Foreign investor claims

To encourage open investment regimes, the United States has long sought mutual investment obligations with our trading partners that provide a secure, clear, and nondiscriminatory regulatory environment for investors. We share your concern that our investment commitments must be fully compatible with the need to take measures to protect the public welfare and with the U.S. legal system, and in the investment agreements we negotiate we will continue to work to safeguard this important policy objective. Many of the assertions as to the meaning and operation of the chapter's provisions that have been made in the claims that you mention are not the view of the United States, nor of the other NAFTA parties. We have been, and will continue, vigorously defending the cases you raise. However, just as in our own U.S. legal system, creative lawyers cannot be prevented from bringing claims against the United States that we consider meritless. We would also note the provisions of the agreement do not commit the United States or individual states to change any of their laws or other measures regardless of the result of decisions made in these cases.

Public Health

The United States has a long tradition in law and practice of using a precautionary approach in many domestic health and safety programs, including pre-market approval processes for food additives and pesticides. The WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures provides members with the right to take provisional measures when the scientific evidence is insufficient. In fact, the WTO dispute settlement report on beef hormones found that the concept of precaution is specifically incorporated in Article 5.7 of the SPS Agreement. A WTO member taking provisional measures must also fulfill the obligation to develop the necessary scientific information to determine if the measure should be revised or eliminated.

Our experience in a wide variety of domestic and international settings clearly shows that precautionary actions must be viewed in a specific context, such as food safety, fisheries or the environment.

Precaution takes different forms in different contexts and attempting to develop an overall understanding at the international level that would apply in all situations is proving to be extraordinarily difficult. Furthermore, the United States does not agree that there is a commonly understood and accepted principle of international law referred to as the "precautionary principle."

The WTO SPS Agreement clearly recognizes the sovereign rights of WTO members to set the level of protection (or acceptable level of risk) that they individually deem appropriate. The WTO Appellate Body confirmed this principle in a very recent decision upholding France's restrictions on asbestos. USTR is prepared to defend this right whenever necessary.

Procurement policy

The participation of California and 36 other states in the WTO Government Procurement Agreement (GPA) has been instrumental in allowing U.S. negotiators to open up opportunities for California-based firms and their workers to compete on a level playing field for billions of dollars of foreign government contracts every year. At the same time, the GPA protects the rights of governments to determine what kinds of goods and services they wish to procure, provided that their policies and practices are implemented in a manner that is consistent with standard U.S. principles of fairness and transparency. The Federal government consults closely with the states on international procurement negotiations and, where appropriate, has negotiated specific provisions to reflect U.S. values and priorities. For example, Article XXIII of the GPA explicitly protects purchasing programs that favor products made by handicapped persons, such as California's laws relating to the products of disabled veterans. In any case, federal law under Sec. 307 of the Tariff Act of 1930 prohibits the importation of goods made in any foreign country by convict labor, forced labor, indentured labor, or child labor.

Taxation

In the area of taxation, USTR has worked closely with the Department of the Treasury, other federal agencies, the Congress, the private sector and state and local authorities in defending against foreign challenges of U.S. tax practices - - most recently, the EU's claims against the foreign sales corporation (FSC) provisions of the Internal Revenue Code. We pledge to continue that close coordination and to resist attempts by others to use trade rules inappropriately to seek fundamental changes to U.S. tax policies. We will look for ways to resolve our ongoing differences with the EU on these matters while ensuring that U.S. rights and interests are fully protected.

Transparency

Since the creation of the WTO, the United States has registered important progress in making the WTO and its dispute settlement processes more open and transparent, but more needs to be done.

The majority of WTO documentation is now immediately available to the public, the WTO recently upgraded and improved its website (along with its Document Dissemination Facility), dispute settlement reports are being circulated publicly on a more timely basis, and more WTO Members will hopefully follow the U.S. lead by making their own dispute settlement panel submissions available to the public. We will continue to press for further improvements in these areas.

The United States continues to work with our NAFTA partners to make the NAFTA dispute settlement process more transparent. In addition to the panel reports on the NAFTA secretariat website, USTR also maintains public files on NAFTA disputes, providing access to consultation and panel requests, U.S. filings, and panel reports (if any).

In order to assist the public in finding information about trade agreements more generally, USTR has made substantial efforts to improve the content of our website, at www.ustr.gov. Documents, proposals, press releases, Federal Register Notices and other pertinent information on multilateral, regional, bilateral, and sectoral trade policy issues are now easily available to a wide audience. In addition, USTR routinely solicits public comment on all WTO and NAFTA disputes in which the United States is a party.

Services negotiations

With respect to services negotiations in the WTO and the FTAA, our primary objective is to obtain new commercial opportunities for U.S. services exporters. Over four million American jobs depend on our services exports, jobs in both the U.S. services and manufacturing sectors. In the WTO negotiations, under the General Agreement on Trade in Services (GATS), and in the FTAA, we can expect our trading partners to make requests of us to remove perceived obstacles to services trade. I can assure you that we will consult fully with appropriate state and other representatives to respond to those requests. We are mindful of regulatory and other concerns at the federal and sub-federal level in the United States, and are committed to maintaining the right of U.S. regulators to meet their public policy objectives.

You also raise the issue of FTAA and GATS documents. The United States has released public summaries of U.S. negotiating positions in the nine FTAA negotiating groups, which are posted on USTR's website at www.ustr.gov. The draft FTAA texts are available for review by Members of Congress and cleared advisory committees, including state and local associations and members on the Intergovernmental Policy Advisory Committee (IGPAC), described below. The U.S. GATS proposals submitted to the WTO are also publicly available on USTR's website U.S. proposals in both the GATS and FTAA were developed in consultation with Congress, cleared advisory committee members, and the public via several Federal Register notices soliciting written public views.

Procedural issues

In your letter you assert that USTR has not complied with Congressional directives to consult with the states. This is simply not the case. USTR has worked to ensure that states and localities are informed and consulted about trade matters which may affect them. We accomplish that objective through a number of mechanisms.

USTR stays in day-to-day contact with the states through a single State Point of Contact (SPOC) system, established pursuant to the NAFTA and Uruguay Round implementing legislation. Under this system, as specified in the Statements of Administrative Action accompanying the legislation, the governor's office in each state designates a single state point of contact (SPOC) responsible for transmitting information to USTR, and disseminating information received from USTR to relevant state offices. SPOCs regularly receive press releases, Federal Register notices, and other pertinent information and requests for advice, ensuring that state governments are promptly informed of Administration trade initiatives. Discretion is left with the state as to internal coordination of information among the branches of state government. In addition to the SPOC system, we strongly encourage any state or local office to respond directly to Federal Register Notices on trade matters of interest, which may be found on our website mentioned above.

For advice from states and localities on trade policy matters, USTR has established an Intergovernmental Policy Advisory Committee on Trade (IGPAC). It is one of the 33 federal trade advisory committees in the trade advisory system established under the Trade Act of 1974, as amended. The IGPAC is comprised entirely of state and local officials. Appointed on a bipartisan basis by the USTR, the committee may make recommendations to USTR and relevant Cabinet officials on trade matters. IGPAC's membership includes governors, state legislators, attorneys general, mayors, and county officials. Major intergovernmental associations are also represented on the IGPAC, including the National Conference of State Legislatures (NCSL), National Governors Association (NGA), Council of State Governments (CSG), National Association of Attorneys General (NAAG), National Association of Counties (NACo) and National League of Cities (NLC).

Again, I appreciate hearing your concerns and believe that a continued dialogue with state officials and other domestic stakeholders is important as the Administration considers next steps in the U.S. trade agenda. Thank you for your engagement on these timely issues.

Sincerely,

Robert B. Zoellick

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